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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/981,626	10/16/2001	Peter Melchior	4535/22	7032
26646	7590	10/11/2006	EXAMINER	
KENYON & KENYON LLP ONE BROADWAY NEW YORK, NY 10004			MOONEYHAM, JANICE A	
			ART UNIT	PAPER NUMBER
			3629	

DATE MAILED: 10/11/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

09/981,626

Applicant(s)

MELCHIOR ET AL.

Examiner

Janice A. Mooneyham

Art Unit

3629

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 06 September 2006 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: _____.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: see below.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____.
13. ☐ Other: _____.

The Examiner has carefully reviewed the applicant's request for reconsideration.. However, the Examiner has not found the applicant's arguments persuasive.

Applicant argues that Conklin et al. does not disclose a means for electronically evaluating whether a seller has complied.

First, the applicant's system claims refer to a means for "electronically evaluating". The Examiner asserts that the applicant has not provided sufficient structure as the means for performing the evaluation. A careful review of the specification only defines this limitation using the claim language. There is nothing in the specification directing the Examiner to a structure performing this step. If applicant disagrees with the Examiner's assertion, then the Examiner request that the applicant specifically point out in the specification and/or drawing where applicant has disclosed the structure for this means.

The Examiner is giving the phrase "electronically evaluating whether the seller has complied with the seller's obligation as defined by the purchase order agreement " the broadest reasonable interpretation. Thus a means for electronically evaluating could be a computer screen.

The Merriam Webster dictionary defines the term "electronically" as:

electronic

4 entries found for electronic.To select an entry, click on it.

Main Entry: elec-tronic Pronunciation: i-'lek-'trä-nikFunction: adjective1 : of or relating to electrons2 a : of, relating to, or utilizing devices constructed or working by the methods or principles of electronics <electronic fuel injection> b : implemented on or by means of a computer : involving a computer <electronic banking>3 a : generating musical tones by electronic means <an electronic organ> b : of, relating to, or being music that consists of sounds electronically generated or modified4 : of, relating to, or being a medium (as television) by which information is transmitted electronically <electronic journalism> - elec-tron-i-cal-ly /-ni-k(&-)IE/ adverb

The broadest reasonable interpretation is that electronically only involve a computer in the evaluating step. Thus email communication or simply reading a computer screen while making an evaluation would be making an evaluation using a computer, thus electronically evaluating.

Conklin et al. discloses a websitewherein a community monitoris activity between buyers and sellers. Figure 8 discloses the system allowing for a determination to be made as to whether an order to be closed and removing the order from an active database (Figure 8 (595)). All of this is performed thru the web based community, thus electronically. As cited before, col.15, lines 7-12, Conklin et al. discloses removing non-compliant participants.

Conklin et al. discloses that the sponsor monitors activity and once the deal is concluded it is archived. (Figure 1g (68) Deal concluded and archived and col. 19,lines 45-48.; Figure 8 (580, 585); Figures 15a- 23; Figure 30; col. 15, lines 7-12 removing non-complaint participants; All of this is done through a multivariate negotiation engine system operated at the system's providers Internet site.col. 27, lines 6-10. Conklin et al. discloses in a proposed letter of credit, such as that shown in Figure 16, the buyer's bank assumes the full credit risk and is absolutely obligated to pay the seller provided the seller ships goods in a way that conforms to every detail to the terms of the letter of credit). Figure 1g shows that the Community monitors activity. Both the Buyer and Seller show they have email and browser access (Figure 1g (58) (78)).

Since the examiner is interpreting the term electronically to mean that the computers are involved the Examiner asserts that when the system monitors activity and removes non-compliant participants, this all performed thru a web based community, that this is using a computer system. When a determination is made, the performance of the participants is evaluated.



Jan Mooneyham